

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

August 20, 2008

\_\_\_\_\_  
No. 08-40042  
Conference Calendar  
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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ROLANDO GAMEZ-SILVA

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:07-CR-940-ALL  
\_\_\_\_\_

Before GARZA, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Rolando Gamez-Silva appeals from his sentence for being an alien unlawfully found in the United States after deportation following a felony conviction. He asserts that the district court erred by imposing a 16-level enhancement based upon his prior Texas conviction for burglary of a habitation. Although he recognizes our precedent that this offense is a crime of violence for U.S.S.G. § 2L1.2 purposes, he argues that *James v. United States*, 127 S. Ct.

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

1586, 1599-1600 (2007), overrules it. His argument is unpersuasive. In *United States v. Gomez-Guerra*, 485 F.3d 301, 303 n.1 (5th Cir.), cert. denied, 128 S. Ct. 156 (2007), we noted that James pertains only to a residual provision of 18 U.S.C. § 924(e)(2)(B)(i) that is absent from § 2L1.2. Consequently, James is not dispositive. Because we have held that the Texas offense of burglary of a habitation constitutes a crime of violence for purposes of § 2L1.2, the district court did not err in applying the enhancement. See *Gomez-Guerra*, 485 F.3d at 304 & n.3; *United States v. Garcia-Mendez*, 420 F.3d 454, 456-57 (5th Cir. 2005).

The Government's motions for summary affirmance and to waive the requirement to file an appellee's brief are GRANTED, the Government's motion for an extension of time to file an appellee's brief is DENIED, and the judgment of the district court is AFFIRMED.